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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3239-JM
13 Plaintiff,)
14 v.) GOVERNMENT'S TRIAL MEMORANDUM
15 LEONARDO SAN JUAN, JR.,) Date: June 2, 2008
16 Defendant.) Time: 9:00 a.m.
17) Honorable: Jeffrey T. Miller
18)
19)
20)

21 COMES NOW the plaintiff, United States of America, by and
22 through its counsel, Karen P. Hewitt, United States Attorney,
23 and Nicole Acton Jones and Tara McGrath, Assistant United
24 States Attorneys, respectfully submits the following Trial
Memorandum.

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I

STATEMENT OF THE CASE**A. INDICTMENT**

On November 29, 2007, a grand jury returned a one-count Indictment against defendant Leonardo San Juan, Jr., charging him with possession of an unregistered firearm, in violation of 26 U.S.C. § 5861(d). On December 5, 2007, Defendant was arraigned on the Indictment and entered a plea of not guilty. On February 15, 2008, Defendant was arraigned on a one-count superseding Indictment and entered a plea of not guilty.

B. TRIAL STATUS

Trial is scheduled for Monday, June 2, 2008, at 9:00 a.m. before the Honorable Jeffrey T. Miller. The United States anticipates that its case-in-chief will last one to two days.

C. STATUS OF COUNSEL

Defendant is represented by retained counsel, Joseph H. Low IV.

D. CUSTODY STATUS

Defendant is out of custody on a \$25,000 personal appearance bond.

E. INTERPRETER

The United States does not need an interpreter for any of its witnesses.

F. JURY WAIVER

Defendant has not waived trial by jury.

G. PRETRIAL MOTIONS

On December 21, 2007, Defendant filed a motion for a bill of particulars. The Government filed its response and

1 opposition to this motion January 3, 2008. On January 4,
2 2008, the Government filed a motion for reciprocal discovery.
3 At the motion hearing on February 15, 2008, the Court denied
4 Defendant's motion for a bill of particulars and deferred
5 ruling on the Government's motion for reciprocal discovery.

6 Motions in limine are scheduled to be heard on May 30,
7 2008. The Government has filed motions in limine to 1) admit
8 statements by Ramirez; 2) admit statements by defendant 3)
9 allow video of AK-47; 4) preclude inflammatory testimony and
10 5) preapprove voir dire questions. The Government has also
11 filed a motion to permit the Government to bring the firearm
12 into the Courthouse.

13 H. STIPULATIONS

14 The Government and Defendant have not entered into any
15 stipulations.

16 I. DISCOVERY

17 The United States has complied and will continue to
18 comply with its discovery obligations. Defendant has provided
19 the names of some potential witnesses, but has not provided
20 reciprocal discovery regarding exhibits or documents to be
21 used at trial or expert disclosures.

22 II.

23 STATEMENT OF FACTS

24 On June 25, 2006, Captain Glenn Davis, United States
25 Marine Corps Reserve, was working at the Iron Sights gun range
26 when a then unidentified female came to the range to learn how
27 to shoot her boyfriend's .45 caliber semi-automatic handgun
28 for protection. Captain Davis attempted to teach her how to

1 use the gun, but the female had difficulty with the weapon's
2 slide and safety. Captain Davis asked the female if she had
3 anything else, meaning another gun. The female responded that
4 she had AK's in her garage. After the female left the gun
5 range, Captain Davis contacted law enforcement.

6 Agents with the Bureau of Alcohol, Tobacco, Firearms and
7 Explosives (ATF) and the Naval Criminal Investigative Service
8 (NCIS) conducted an investigation and, by tracing 911 calls,
9 identified the female as Christina Ramirez. On June 28, 2006,
10 ATF Agent Schmidt talked to Ramirez at her residence. Ramirez
11 stated she leased the residence with her fiancé, Leonardo San
12 Juan, Jr. (the Defendant). A consent search of the apartment
13 and its associated garage revealed an AK-47 machinegun in a
14 plastic container in the back of the garage, hidden beneath
15 military clothing and gear bearing Defendant San Juan's name.

16 On or about June 29, 2006, Agent Schmidt received a
17 voicemail message from Defendant San Juan stating that he knew
18 guns were taken from his house and inquiring as to what was
19 going on. Agent Schmidt relayed the message to NCIS Agent
20 Tedla. On June 29, 2006, Agent Tedla spoke over the telephone
21 with Defendant San Juan, who stated that he knew his weapons
22 were taken the previous day from his house and he wanted to
23 know what was going on.

24 Testing of the weapon found in Defendant's garage by ATF
25 Firearms Enforcement Officer Michael Knapp revealed that the
26 firearm was a functional, fully-automatic AK-47. In addition,
27 Knapp determined that the machinegun had been manufactured at
28

1 a factory in Bulgaria and additional markings on the weapon
2 indicated it had been issued to the Iraqi National Forces.

3 A search of the National Firearms Registration and
4 Transfer Record revealed no registration records or
5 authorizations allowing Defendant to possess a fully automatic
6 weapon.

7 III

8 PERTINENT LAW

9 Title 26, U.S.C., Section 5861(d), provides that it is
10 unlawful for any person to receive or possess a firearm which
11 is not registered to him in the National Firearms
12 Registration and Transfer Record.

13 The definition of firearm in 26 U.S.C. § 5845(a) includes
14 "machineguns," which in turn is defined as "any weapon which
15 shoots, is designed to shoot, or can be readily restored to
16 shoot, automatically more than one shot, without manual
17 reloading, by a single function of the trigger."

18 To establish a violation of Section 5861(d), the
19 Government must prove beyond a reasonable doubt that:

- 20 (1) the defendant knowingly possessed the firearm;
21 and
22 (2) the firearm was not registered to the defendant
23 in the National Firearms Registration and
24 Transfer Record.

25 The government must prove that the defendant knew of
26 those features which brought the firearm within the scope of
27 the statute. See Staples v. United States, 511 U.S. 600, 619
28 (1994) ("to obtain a conviction, the Government should have

1 been required to prove that petitioner knew of the features of
2 his AR-15 that brought it within the scope of the Act"). See
3 also United States v. Gergen, 172 F.3d 719, 724 (9th Cir.
4 1999). Thus, in this case the Government must prove that
5 Defendant knew of the firearm's capability to fire in an
6 automatic mode. See United States v. Smith, 217 F.3d 746,
7 750-51 (9th Cir. 2000).

8 IV

9 WITNESSES

10 The Government reserves the right to add, omit,
11 substitute or change the order of witnesses. Presently, the
12 Government intends to call the following witnesses during its
13 case-in-chief:

- 14 1. Captain Bradley Fultz, USMC
- 15 2. Sergeant Dirk Myers, USMC
- 16 3. Gunnery Sergeant Justin Sisario, USMC
- 17 4. Chief Warrant Officer 3 Jesus De la Trinidad, USMC
- 18 5. Staff Sergeant Michael Wold, USMC
- 19 6. Captain Glenn Davis, USMCR
- 20 7. John Schmidt, ATF
- 21 8. Alex Tedla, NCIS
- 22 9. Michael Knapp, ATF
- 23 10. Matt Beals, ATF

24 V

25 EXHIBIT LIST

26 The Government will provide a final exhibit list on the
27 morning of trial. Presently, the Government intends to offer
28 into evidence the following:

1. Lease
2. Consent to Search Form
3. Photographs of garage
4. AK-47
5. Receipt and Inventory
6. SDG&E Utility documents
7. Certified copy of National Firearms Registry search results
8. Video of AK-47

VI

PROPOSED VOIR DIRE

1. Does anyone have strong feelings regarding the Bureau of Alcohol, Tobacco, Firearms and Explosives, i.e. ATF?
2. Is anyone a member of any organizations, groups or clubs that advocate for or against the possession or use of firearms?
3. Does anyone have strong feelings about gun laws?
4. Does anyone believe that gun laws are too harsh?
5. Does anyone have experience with machineguns?
6. What does a person who illegally possesses an automatic machine gun look like?
7. Does everyone agree that any preconceived ideas of what a person who illegally possesses a machine gun looks like should not be considered when evaluating the facts in this case?
8. Does anyone have a strong opinion either in support of or in opposition to the war in Iraq?

- 1 A. For those who answered yes, what is your
2 position?
- 3 B. Will that position have an impact on how
4 you evaluate the testimony of military
5 witnesses in this case?
- 6 C. For those of you who expressed a strong
7 opinion in support of the war in Iraq, will
8 that opinion impact your ability to
9 impartially evaluate the evidence presented
10 against the Defendant who has served in
11 Iraq?
- 12 9. Is anyone currently serving in the military or a
13 veteran of any military service branch?
- 14 A. For those of you who answered yes, did you
15 serve in a war?
- 16 B. For those of you who served in a war, did
17 you bring home any mementoes or items from
18 the war belonging to the enemy for example
19 a flag, personal item or weapon?
- 20 C. If so, where is that item now?
- 21 D. For those of you who answered yes regarding
22 military service, did you ever serve as
23 jury member on a court-martial or as a jury
24 member on an administrative processing
25 board hearing?
- 26 E. What was the nature of the case or
27 administrative board hearing?
- 28 F. What was the outcome of that proceeding?

1 G. Did anyone ever serve as the adjudicating
2 officer on a Non-Judicial Punishment
3 proceeding?

4 H. What was the nature of the NJP proceeding?

5 I. What was the outcome of that proceeding?

6 10. Does anyone have a close family member, for example
7 a parent, spouse, sibling or child who is currently
8 serving in the military or a Veteran?

9 A. For those of you who answered yes, did that
10 family member serve in a war?

11 B. For those of you who have a family member
12 who served in a war, did that person bring
13 home any item he or she obtained while
14 serving overseas such as a a flag, personal
15 item or weapon or a similar memento?

16 C. What was brought home?

17 D. Where is the item now?

18 11. Does everyone understand that as a juror your duty
19 is to apply the law regardless of whether you
20 disagree with it?

21 12. Does everyone understand that as a juror you are not
22 to consider prejudice, pity or sympathy in deciding
23 whether the Defendant is guilty or not guilty?

24 13. Does anyone think that, regardless of the strength
25 of the evidence, they will have trouble deciding
26 whether the Defendant is guilty or not guilty?

1 14. The Defendant is wearing a military uniform today,
2 what impact will that have on your decision in this
3 case?

4 15. Does anyone believe that a defendant who has served
5 his or her country should be given special
6 treatment?

7 16. Does anyone believe that military service members
8 should not be subject to civilian laws?

9 17. Does everyone agree that all citizens, regardless of
10 their military service to this country, must abide
11 by the law?

12 18. Will the fact that the Defendant served in Iraq
13 impact your evaluation of the facts in this case?

14 19. Does anyone think they cannot decide whether a
15 person is guilty or not guilty?

16 20. Does anyone have religious or moral beliefs which
17 will make it difficult for them to make a decision
18 strictly based on the law and facts of this case?

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VII

JURY INSTRUCTIONS

The United States will submit proposed jury instructions under separate cover. The United States reserves the right to submit additional instructions at the Fed. R. Crim. P. 30 conference.

DATED: May 27, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ **Nicole Acton Jones**
NICOLE ACTON JONES
Assistant U.S. Attorney

TARA MCGRATH
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No07CR3239-JM
)
)
)
Plaintiff,)
)
v.)
) CERTIFICATE OF SERVICE
LEONARDO SAN JUAN, JR.,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, NICOLE ACTON JONES, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S TRIAL MEMORANDUM** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Joseph H. Low IV

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 2008.

/s/ Nicole Acton Jones
NICOLE ACTON JONES
Assistant U.S. Attorney